

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	No. 5:17-CR-50027-TLB
)	
PENG CHANTHALANGSY,)	
Defendant.)	

**MOTION FOR SEPARATE TRIAL ON COUNTS
ONE THROUGH FOUR AND COUNT FIVE**

COMES NOW the defendant, **Peng Chanthalangsy**, by the Office of the Federal Public Defender and its attorney, **Jack Schisler**, and does hereby respectfully move this Court as to the following: to sever Counts One through Four from Count Five of the Indictment filed in this case, and to set a new trial date for those counts. The motion is based upon the following:

1. Counts One through Four of the indictment allege various offenses in violation of Title 21 of the United States Code pertaining to methamphetamine possession and delivery. Count Five alleges a violation of 18 U.S.C. § 2252A(a)(5)(B) involving possession of child pornography.

2. Trial for these matters is currently scheduled for July 17, 2017.

3. Rule 8(a) of the Federal Rules of Criminal Procedure reads:

Joinder of Offenses. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

Pursuant to Rule 8(a), the joinder of Counts One through Four with Count Five is improper, in that the offenses are not of the same or similar character, nor are they

based on the same act or transaction, nor are they acts constituting a common scheme or plan. The alleged child pornography was found accidentally during the search of a computer for evidence pertaining to drug offenses.

4. Rule 14(a) of the Federal Rules of Criminal Procedure reads:

Relief. If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

Pursuant to Rule 14(a), this joinder of offenses is unfairly prejudicial to the defendant, in that his guilt on the child pornography count could be improperly inferred from evidence presented in regard to the drug counts.

5. The evidence presented in regard to Counts One through Four and Count Five pertain to two separate investigations. The evidence and witnesses used by the government to prove the counts will be different, with the result being that judicial economy would not be adversely affected by severance of the counts, while protecting the defendant from unfair prejudice would be achieved by severance.

WHEREFORE, the defendant respectfully requests this Court to sever Counts One through Four from Count Five and to set Counts One through Four for a separate trial date.

Respectfully submitted,

BRUCE D. EDDY
FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF ARKANSAS

By: /s/ Jack Schisler

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing registered CM/ECF participants.

/s/ Jack Schisler

Jack Schisler

Assistant Federal Public Defender